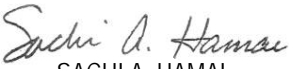


ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

#28 JUNE 14, 2011


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June 14, 2011

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**APPROVAL OF MEDICARE GRADUATE MEDICAL EDUCATION
AFFILIATION AGREEMENT AND AMENDMENT WITH THE UNIVERSITY
OF SOUTHERN CALIFORNIA
(SUPERVISORIAL DISTRICT 1)
(3 VOTES)**

SUBJECT

Request approval of the Medicare Graduate Medical Education Affiliated Group Agreement and the First Amendment to Agreement Regarding Shared Residents, both with the University of Southern California on behalf of the USC University Hospital, to aggregate the Medicare-supported residency training slots of LAC+USC Medical Center and USC University Hospital for the next three years to obtain additional Medicare reimbursement which would be shared between the parties.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Authorize the Director of Health Services (Director), or his designee, to execute a new Medicare Graduate Medical Education (GME) Affiliated Group Agreement and the First Amendment to Agreement Regarding Shared Residents (No. H-704383), both with the University of Southern California (USC) on behalf of the USC University Hospital (USC-UH), effective upon Board approval through June 30, 2014, to temporarily transfer 50 Medicare-supported residency slots from LAC+USC Medical Center (LAC+USC MC) to USC-UH, with payment to the County to offset the costs of sponsoring the physician training programs in the following amounts: \$1,800,000 for Fiscal

Year (FY) 2011-12, \$1,950,000 for FY 2012-13 and \$2,100,000 for FY 2013-14.

2. Delegate authority to the Director, or his designee, to execute similar future agreements and/or extension amendments with the same or different numbers of slots so long as the benefit to the County is no less than \$42,000 per slot, upon review and approval of County Counsel, and notification to your Board and the Chief Executive Office.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the first recommended action will allow the Director, or his designee, to sign a new Medicare GME Affiliated Group Agreement and the First Amendment to the Agreement Regarding Shared Residents, substantially similar to Exhibits I and II, both with USC on behalf of USC-UH. Currently, Medicare reimburses teaching hospitals for the costs of training resident physicians but caps the number of residency slots that each hospital can claim for reimbursement. The new Affiliated Group Agreement will aggregate and then reallocate the Medicare-supported residency slots under each hospital's cap. This will permit USC-UH to access 50 of LAC+USC MC's positions under its allocation to obtain additional reimbursement from Medicare.

Under the First Amendment to the Agreement Regarding Shared Residents, USC-UH will pay LAC+USC MC \$1,800,000, \$1,950,000 and \$2,100,000 for FYs 2011-12, 2012-13, and 2013-14, respectively, for the use of the 50 reallocated slots. However, as discussed below, the net benefit received by the County may be lower than this amount based on the outcome of the cap redistribution by the federal government under the Patient Protection and Affordable Care Act (PPACA) passed in March 2010.

Approval of the second recommendation will allow the Director to execute similar future agreements and/or extension amendments, and change the number of residency slots and funding so long as the net financial benefit to the County for such slots does not decrease.

Implementation of Strategic Plan Goals

The recommended actions support Goal 4, Health and Mental Health, of the County Strategic Plan.

FISCAL IMPACT/FINANCING

Payments to the County under the proposed GME Affiliation Agreements will offset the Department of Health Services' (Department) unreimbursed GME program costs. The amount of reimbursement that the County will receive from USC-UH for FY 2011-12 is \$1,800,000, to be paid in two equal installments in January and June. Increased amounts will be paid during the next two fiscal years. However, under PPACA, Medicare is reducing the GME caps of institutions with unused residency slots and allowing them to be moved to other hospitals. The transfer of 50 positions to USC-UH, taking into account the potential federal cap reduction, could reduce LAC+USC MC's Medicare reimbursement by about \$250,000 in FY 2011-2012, reducing the net benefit of the Agreements with USC-UH for that year to about \$1,550,000. Potential reductions of about \$675,000 and \$770,000 to the net benefit would occur in the subsequent two fiscal years, respectively.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Medicare reimburses teaching hospitals for the costs of training resident physicians. The Medicare subsidy program has two parts: Direct Graduate Medical Education (DGME) payments and an indirect medical education (IME) adjustment to other Medicare inpatient payments. DGME payments help pay for the direct costs of training physicians (e.g., salaries of medical residents and faculty, and related hospital overhead expenses) and are based on the allowable number of full-time equivalent (FTE) residents training at the teaching hospital, historical costs, and the hospital's volume of Medicare patients. The IME payments to teaching hospitals are designed to cover the additional costs that teaching hospitals incur in caring for patients in a training environment (e.g., costs associated with offering a broader range of services, using more services, and employing a more costly staff mix) and are calculated as a percentage add-on to the payments that Medicare makes for inpatient services. As with DGME, the amount of the IME add-on varies with the number of allowable FTE residents.

In calculating DGME and IME payments, the number of residents who may be recognized is limited based on a historical cap. There are only limited opportunities to increase such caps; however, based on a provision in the recent federal health care reform legislation, Medicare can reduce a hospital's cap beginning July, 2011, to the extent that the hospital had FTE slots under its cap in prior years that were not filled. LAC+USC MC anticipates that its cap will be reduced, although it may seek an exemption from such reductions. The regulations permit hospitals which share residency programs to aggregate and then redistribute their cap amounts by creating a Medicare GME Affiliated Group.

On June 30, 2009, your Board authorized the Interim Director to enter into agreements with USC effective for FY 2009-10 to form a Medicare Affiliated Group comprised of USC-UH and LAC+USC MC, and to specify USC payments to LAC+USC MC for the temporary use of Medicare-supported residency slots. Your Board also delegated authority to the Interim Director to execute future agreements and/or extension amendments to the Agreements. Under the Agreements, the parties agreed to allow USC-UH to access 40 DGME and IME positions under LAC+USC MC's cap and USC paid the County \$1,400,000. Using delegated authority, the parties entered into the same Agreements for FY 2010-11.

The parties wish to continue this arrangement, and to increase the number of LAC+USC MC's FTE positions that are used by USC-UH to 50, as well as increase the amount which is paid by USC. However, because of reductions that Medicare may make in LAC+USC MC's cap under PPACA, this arrangement is likely to cause LAC+USC MC to lose DGME or IME payments for some of the residents it will train during the term of these Agreements. Although LAC+USC MC may seek an exemption from the reduction, and has other appeal rights, a reduction in aggregate Medicare DGME and IME reimbursement remains possible. Taking a worst case scenario, the net benefit to LAC+USC MC from this arrangement for FY 2011-12 may be approximately \$1,550,000. However, regardless of the number of slots that LAC+USC MC may lose in the redistribution process, the agreements will benefit LAC+USC MC since the payments received from USC will outweigh the potentially lost Medicare reimbursements.

CONTRACTING PROCESS

Not applicable.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Board approval of the recommended actions will help to defray the unreimbursed cost of LAC+USC MC's physician training programs and recognize the strong partnership between USC and the Department in physician training within the community.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mitchell Katz". The signature is written in a cursive, flowing style.

Mitchell H. Katz, M.D.
Director

MHK:ps

Enclosures

c: Chief Executive Office
County Counsel
Executive Office, Board of Supervisors

AFFILIATED GROUP AGREEMENT

This Affiliated Group Agreement (“Agreement”) is entered into effective July 1, 2011 (“Effective Date”) by and between the University of Southern California, a non-profit public benefit corporation, on behalf of its USC University Hospital (“UH”), and the County of Los Angeles, on behalf of Los Angeles County-University of Southern California Medical Center (“LAC+USC”), each of which is a hospital licensed under the laws of California and a participating provider in the Medicare Program (together, the “Hospitals” and each a “Hospital”).

R E C I T A L S

WHEREAS, both LAC+USC and UH serve as training sites for resident physicians (“Residents”) who are enrolled in certain accredited programs (“Programs”) of graduate medical education;

WHEREAS, the number of unweighted Full Time Equivalent (“FTE”) residents which Hospitals may claim for purposes of determining direct graduate medical education (“Direct GME”) payments and indirect medical education (“IME”) adjustments from Medicare is limited to the number set by the regulations at 42 C.F.R. § 413.79(c)(2) and § 412.105(f)(1) (“FTE Caps”);

WHEREAS, for purposes of applying the FTE Caps, the Hospitals wish to form a “Medicare GME affiliated group,” as that term is defined in 42 C.F.R. § 413.75(b) to adjust temporarily the application of those FTE Caps;

WHEREAS, Hospitals are located in the same urban area and have shared rotational arrangements pursuant to which a number of residents participate in training at both Hospitals as part of the Programs and, accordingly, are eligible to meet the definition of “Medicare GME affiliated group;”

NOW THEREFORE, the Hospitals agree as follows:

1. Formation of Medicare GME Affiliated Group.
 - a. UH, with Medicare provider number 05-0696 and LAC+USC, with Medicare provider numbers 05-373, and 50S373, NPIs 1598773715 and 1356350318, hereby renew an existing Medicare GME affiliated group as defined in 42 C.F.R. § 413.75(b), and agree to be treated collectively as members of a Medicare GME affiliated group pursuant to 42 C.F.R. § 413.79(f), as of the Effective Date of this Agreement.
 - b. UH and LAC+USC shall maintain, for the term of this Agreement, shared rotational arrangements, as defined in 42 C.F.R. § 413.75(b), and consistent with 42 C.F.R. § 413.79(f)(2).

2. Adjustment to Resident Counts.

a. Direct GME Payments.

- i. Without consideration of the Affiliated Group Agreement currently in place, UH has a Direct GME unweighted FTE Cap of 46.53 FTEs, and when calculated correctly, LAC+USC has a Direct GME unweighted FTE Cap of 701.30 FTEs. For purposes of the preceding sentence, the Direct GME unweighted FTE Cap was calculated in accordance with 42 C.F.R. § 413.79(c) based on each Hospital's unweighted FTE Resident count for that Hospital's most recent cost reporting period ending on or before December 31, 1996, subject to any subsequent adjustments permitted or required by the regulations.
- ii. LAC+USC agrees that, for the term of this Agreement, for purposes of determining its Medicare Direct GME payments, the Direct GME FTE Cap specified in Section 2(a)(i) above shall be reduced by 50 FTEs.
- iii. UH agrees that, for the term of this Agreement, for purposes of determining its Medicare Direct GME payments, the Direct GME FTE Cap specified in Section 2(a)(i) above shall be increased by 50 FTEs.

b. IME Adjustments.

- i. Without consideration of the Affiliated Group currently in place, UH has an IME FTE Cap 42.93 FTEs and LAC+USC has an IME FTE Cap of 648.79 FTEs when calculated correctly. For purposes of the preceding sentence, the IME FTE Cap for each Hospital was that Hospital's IME FTE Cap calculated in accordance with 42 C.F.R. § 412.105(f)(1)(iv) based on the Hospital's most recent cost report period ending on or before December 31, 1996, subject to any subsequent adjustments permitted or required by the regulations.
 - ii. LAC+USC agrees that, for the term of this Agreement, for purposes of determining its Medicare IME adjustment, the IME FTE Cap specified in Section 2(b)(i) above shall be reduced by 50 FTEs.
 - iii. UH agrees that, for the term of this Agreement, for purposes of determining its Medicare IME adjustment, the IME FTE Cap specified in Section 2(b)(i) above shall be increased by 50 FTEs.
- c. The Hospitals understand and agree that, for so long as this Agreement is in effect, any positive adjustment to the Direct GME and IME FTE Caps of UH must be offset by negative adjustments to the Direct GME and IME FTE Caps of LAC+USC of at least the same amount.
- d. The Hospitals agree that, during the term of the Agreement, each Hospital must count only the proportionate amount of time spent by the residents at its own

facility or in a non-hospital setting to the extent permitted by 42 C.F.R. § 413.79(f) and C.F.R. § 412.105(1)(f)(ii)(C) in its FTE counts and that no resident may be counted in the aggregate as more than one FTE.

- e. During the term of this Agreement, the FTE count of residents participating in training programs at LAC+USC shall reflect the fact that no less than 50 FTE residents shall be rotating to UH to perform services there as part of the same Programs as they are participating in at LAC+USC. The FTE count of residents at UH shall include no less than 50 FTE residents who perform services at UH as part of the same Programs as they are participating in at LAC+USC. These shared rotations are reflected in the adjustments each Hospital's Direct GME and IME FTE Caps set forth in Sections 2.a and 2.b.

3. Term and Termination.

a. Term. The Term of this Agreement shall be from July 1, 2011 through June 30, 2012, provided, however, that this Agreement shall automatically renew for three (3) one year terms thereafter unless the agreement is earlier terminated in accordance with this Agreement.

b. Termination. This Agreement shall automatically terminate in the event of a change in applicable law prohibiting Medicare GME affiliated group arrangements. The County may terminate this Agreement on thirty (30) days written notice if USC is in breach of the Agreement Regarding Shared Residents, which is being executed by the parties in conjunction with this Agreement, and that breach is not cured in accordance with the provisions of that agreement.

c. Effect of Termination, Dissolution, Expiration of Agreement. In the event of the termination, dissolution or expiration of this Agreement, the Hospitals agree that each Hospital's Direct GME and IME FTE Resident caps shall be the same Direct GME and IME FTE Caps as existed prior to the Effective Date of this Agreement.

4. Miscellaneous.

- a. Submission of Agreement to Medicare Administrative Contractor and CMS. Upon the execution of this Agreement and no later than June 30, 2011, each Hospital shall send this Agreement to its Medicare Administrative Contractor and the Hospitals shall additionally furnish a copy of this Agreement to the Centers for Medicare & Medicaid Services.
- b. Assignment. This Agreement is not assignable or transferable by either Hospital.
- c. Amendment. This Agreement may be amended only by the written agreement of the Hospitals.

The Hospitals have caused this Agreement to be executed in duplicate by their respective duly authorized representative effective as of the date first written above.

**UNIVERSITY OF SOUTHERN
CALIFORNIA, on behalf of USC
UNIVERSITY HOSPITAL**

**COUNTY OF LOS ANGELES, on behalf of
LAC+USC Medical Center**

By: _____
Name: Todd R. Dickey
Title: Senior Vice President, Administration

By: _____
Name: Mitchell H. Katz, MD
Title: Director, Department of Health Services

Date: _____

Date: _____

FIRST AMENDMENT TO AGREEMENT REGARDING SHARED RESIDENTS

This First Amendment ("Amendment") is entered into effective July 1, 2011, by and between the University of Southern California ("USC") and the County of Los Angeles ("County") (USC and County sometimes referred to each as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, the Parties entered into an Agreement Regarding Shared Residents (the "Agreement"), effective July 1, 2010; and

WHEREAS, the Parties wish to amend the Agreement as set forth herein.

NOW THEREFORE, for consideration, the sufficiency of which each Party hereby acknowledges, the parties agree as follows:

1. Section I of the Agreement is hereby deleted in its entirety and replaced with the following:

"Joint Agreement to Enter into an Affiliated Group Agreement. During the term of this Agreement, the Parties agree to remain parties to an Affiliated Group Agreement, in a manner and form consistent with 42 C.F.R. § 413.75 and § 413.79(f), and to provide such Affiliated Group Agreement timely to the Centers for Medicare and Medicaid Services and their respective Medicare Administrative Contractor(s)."

2. Section II of the Agreement is hereby deleted in its entirety and replaced with the following:

"Payment by USC to County. USC shall pay to County the amount for each fiscal year this agreement is in effect as follows:

Fiscal year 2011-12: One million eight hundred thousand dollars (\$1,800,000.00)

Fiscal year 2012-13: One million nine hundred fifty thousand dollars (\$1,950,000.00)

Fiscal year 2013-14: Two million one hundred thousand dollars (\$2,100,000.00) and for each fiscal year thereafter unless renegotiated by the parties.

Such payment shall be made in two equal installments annually: one on or before January 15 of the relevant year and the second on or before June 30 of such year."

3. The first paragraph of Section III, Term and Termination is hereby deleted in its entirety and is replaced by the following:

Subject to earlier termination as provided in this Agreement, this Agreement shall be effective on the date specified above and shall continue for an initial term of one year, and automatically renew for three (3) one year terms thereafter unless either party, with or without cause, gives the other written notice of nonrenewal at least thirty (30) days before the expiration of the initial or any renewal term.

4. Except as modified in this Amendment, all other provisions of this Agreement shall remain unchanged.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the date first written above.

County of Los Angeles

University of Southern California

By: _____

Name: Mitchell H. Katz, M.D.

Title: Director, Department of Health Services,
County of Los Angeles

By: _____

Name: Todd R. Dickey

Title: Senior Vice President of Administration,
University of Southern California